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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,273	04/15/2004	Franz Konrad	KONRAD 8	7919

7590 10/11/2006

COLLARD & ROE, P.C.  
1077 Northern Boulevard  
Roslyn, NY 11576

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/825,273

Applicant(s)

KONRAD, FRANZ

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4-15-04</u> <u>8-7-06</u> | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

### ***Claim Objections***

3. Claims 2,3, and 10-13 are objected to because of the following informalities: the subject and verb agreement in the claims should read -- at least one...is -- and -- retaining means is --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 1-5,7,19-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Regarding claim 19, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Similarly, the phrases "in particular" and "but preferably" render the claims indefinite.

There is insufficient antecedent basis for the following limitations in the claims:

- Claim 2 recites the limitation " at least one of the coupling elements " in lines 1-2;

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- Claim 3 recites the limitation " at least some of the individual projections of the first coupling part " in lines 1-2; and
- Claim 21 recites the limitation " the material splits " in lines 1-2.

The structure of the cap, sealing device and/or container is not clearly set forth.

- To what structure does "it" refer in claim 24?
- What is "liquid-proof arrangement" as set forth in claim 29?
- What structure is represented by "web-type" structure?
- When is the sealing means introduced? Is the sealing means intended to be claimed as part of the sealing device?

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by McElroy (US 1,180,665). Disclosed is a sealing device having a flange and at least one material split 15. See figure 15 illustrating the multiple slits 15.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konrad et al. (US 5,522,518) and Konrad et al. (US 5,294,011).

Both Konrad '518 and Konrad '011 disclose the claimed cap except is silent regarding the relative dimensions of the coupling parts.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the closure cap with a coupling part to be 5% to 25% smaller than an external dimension of an associated sealing device, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so provides a snug fit between the cap and the sealing device.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Konrad '518 or Konrad '011 in view of Suzuki et al. (US 5,881,899).

Konrad '518 or Konrad '011 discloses the claimed cap except for the at least one additional retaining means on the first coupling part.

Suzuki teaches it is known to provide retaining means on a cap on a coupling part.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one additional retaining means on the first coupling part. Doing so provides additional securement between the closure and sealing device.

10. Claims 6-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konrad '518 or Konrad '011 in view of Suzuki.

Konrad 518 or Konrad '011 discloses the claimed cap except for the at least one additional retaining means on the first coupling part.

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Suzuki teaches it is known to provide retaining means on a cap on a coupling part.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of at least one additional retaining means on the first coupling part. Doing so provides additional securement between the closure and sealing device.

11. Claims 19-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konrad '518 or Konrad '011 in view of Robinson (US 4,976,894).

Both Konrad patents disclose the claimed sealing device except for at least one material split.

Robinson teaches it is known to provide a sealing device with at least one material split.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least one material split in the sealing device of either Konrad sealing devices. Doing so allows for easier insertion of a device through the sealing device for removal of contents in an associated container.

Regarding the claimed materials, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize any material expedient for manufacture and intended use of the sealing device, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the closure cap with a coupling part to be 0% to 30% smaller than an internal dimension of an associated container, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges

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involves only routine skill in the art. Doing so provides a snug fit between the cap and the container.

12. Claims 40-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konrad '518 or Konrad '011 in view of McElroy

Both Konrad patents disclose the claimed sealing device except for at least one material split.

McElroy teaches it is known to provide a sealing device with at least one material split.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least one material split in the sealing device of either Konrad sealing device. Doing so allows for easier insertion of a device through the sealing device for removal of contents in an associated container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the closure cap with a coupling part to be 0% to 30% smaller than an internal dimension of an associated container, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so provides a snug fit between the cap and the container.

### ***Conclusion***

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without

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specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
September 20, 2006



Robin A. Hylton  
Primary Examiner  
GAU 3727